

1995, except the expiration date of the operating permit.

(6) Crawford Furniture Manufacturing Corp.—OP 16-021, effective March 27, 1995.

(7) Schuylkill Energy Resources—OP 54-0003, effective May 19, 1995, except the expiration date of the operating permit.

(8) Panther Creek Partners—OP 13-0003, effective May 19, 1995, except the expiration date of the operating permit, the non-VOC emission requirements in condition (7), and conditions (8) and (9).

(9) Columbia Gas Transmission Company—Milford—OP 52-0001, effective May 19, 1995, except the expiration date of the operating permit.

(10) Texas Eastern Transmission Corp.—OP 31-2003, effective May 16, 1995, except the expiration date of the operating permit.

(11) Columbia Gas Transmission Corp.—Greencastle—OP 28-2003, effective April 21, 1995, except the expiration date of the operating permit.

(12) Lord Corporation—OP 25-095, effective March 30, 1995.

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40 CFR Part 70

[AR-FRL-5293-1]

Clean Air Act Final Interim Approval of Operating Permits Program; the State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interim Approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits program submitted by the Arkansas Department of Pollution Control and Ecology (ADPCE) for the State of Arkansas for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: October 10, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location:

U. S. Environmental Protection Agency, Region 6, Air Programs Branch (6PD-R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219-8913.

FOR FURTHER INFORMATION CONTACT: Wm. Nicholas Stone, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7226.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments, sections 501-507 of the Clean Air Act ("the Act"), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit Operating Permits programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the date of November 15, 1993, or by the end of an interim program, it must establish and implement a Federal program.

On September 19, 1994, the EPA proposed interim approval of the Operating Permits program for the State of Arkansas. See 59 FR 47828 (September 19, 1994). The EPA received public comment on the proposal and compiled a Technical Support Document which describes the Operating Permits program in greater detail. In this document, the EPA is taking final action to promulgate interim approval of the Operating Permits program for the State of Arkansas.

II. Final Action and Implications

A. Analysis of State Submission

The State of Arkansas submitted to the EPA, under a cover letter from the Governor dated October 29, 1993, the State's Operating Permits program. The submittal has adequately addressed all 16 elements required for full approval as discussed in part 70, with the exception of five interim issues listed in the proposal: (1) Reference of Prevention of Significant Deterioration (PSD) applicability for new construction and modification, (2) incorporation by reference of the part 70 provisions regarding complete application requirements and permit content requirements, (3) revision of the minor modification procedure, (4) providing a

definition of the term "prompt", and (5) submission of a State Implementation Plan (SIP) revision for Regulation 19 consistent with Regulation 26. The State of Arkansas appropriately addressed all requirements necessary to receive interim approval of the State Operating Permits program pursuant to title V of the Act and 40 CFR part 70.

B. Response to Comments

Comments were received from three groups during the comment period that ran from September 19, 1994, until October 19, 1994. Listed below are the responses to comments received on the proposed interim approval for the Arkansas Operating Permits program.

1. Section 112(g) Implementation

Comments were made that the EPA should not allow Arkansas to implement section 112(g) until Federal rulemaking is complete. Also, objections were made to the State's use of its preconstruction permit process to implement section 112(g) requirements.

The EPA does not agree with the comment. In its proposed interim approval of Arkansas' part 70 program, the EPA proposed to approve the State's preconstruction review program for the purpose of implementing section 112(g) during the transition period before promulgation of a Federal rule implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether the EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a **Federal Register** notice published on February 14, 1995, 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after the EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that the EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until the EPA provides for such an additional postponement of section 112(g), Arkansas must be able to implement section 112(g) during the transition period between promulgation of the Federal section 112(g) rule and

adoption of implementing State regulations.

For this reason, the EPA is finalizing its approval of Arkansas' preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Arkansas of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if the EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Further, the EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Arkansas currently lacks a program designed specifically to implement section 112(g), the preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Arkansas to select control measures that would meet Maximum Achievable Control Technology, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit.

2. Title I Modification Definition

Comments were made that the EPA has proposed interim approval of the Arkansas program because the State definition of title I modification is inconsistent with the new definition of "title I modification" which the EPA has proposed in the revision to 40 CFR part 70 (59 FR 44460, August 29, 1994). Comments objected to the EPA's reinterpretation of title I modification as an interim approval issue.

The EPA does not agree with the comment. As noted in the proposal for interim approval, the Arkansas Plan of Implementation for Air Pollution Control SIP at Regulation 19.2 clearly defines a modification as any increase in emissions. This definition does not provide for a threshold of emissions that could avoid New Source Review. Therefore, the threshold of emission levels at Regulation 26.10(b)(1) is inconsistent with the approved SIP definition of a modification. The Operating Permits program is consistent with part 70 by disallowing "title I modifications" from using the minor modification procedure at Regulation

26.10(b)(7) which includes actions under the SIP. Because the SIP is federally approved and the provision at Regulation 26.10(b)(7) is consistent with part 70, it is clear that the provision at Regulation 26.10(b)(1) is inconsistent with both the existing State law (the SIP) and with the Federal rule at 40 CFR 70.7(e)(2)(i)(A)(5). This inconsistency is discussed further under Number 3 below.

The EPA required the State to revise the Operating Permits regulation because of this inconsistency and required the State to delete Regulation 26.10(b)(1) because it was inconsistent with the federally approved definition in the State's SIP. The EPA explained its reasoning for not allowing the use of a narrower definition of "title I modifications" in the Washington State final approval notice (see 59 FR 55813, November 9, 1994) and incorporates that discussion here by reference.

3. Minor Modification Process

Comments were made that the EPA lacked the authority to require the State to revise its minor modification process to delete the emissions level threshold for minor modification applicability. Comments stated their belief that the "20% of the applicable definition of major source" constituted a de minimus emissions increase and was allowable under the minor modification rule contained in part 70.

The EPA does not agree. The Federal rule, 40 CFR 70.7(e)(3)(i), allows group processing of minor modifications that collectively meet an emission threshold of 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source, or five tons per year whichever is less, provided the minor modification criteria for individual changes at 40 CFR 70.7(e)(2)(i)(A) are also met. The criteria at 40 CFR 70.7(e)(2)(i)(A)(5) and Regulation 26.10(b)(7) disallow changes that are title I modifications. As discussed under Number 2 above, the SIP at Regulation 19.2 defines "modification" as any increase in emissions. Because Regulation 26.10(b)(1) allows certain emissions increases to be processed under the minor modification procedure, the EPA considers the minor modification process in Regulation 26 to be inconsistent with itself and the Federal part 70 rule.

The EPA is currently revising part 70 to clarify the definition of "title I modification" (see 59 FR 44460, August 29, 1994). After this revision, the provision at Regulation 26.10(b)(1) might be interpreted as a de minimis

threshold. As the promulgated Federal rule exists and the federally approved SIP exist, any increase in emissions would not be allowed under the minor modification procedure. The title I modification issue is discussed in detail in Number 2 above. The State's regulations must be consistent with the Federal rule as currently promulgated. Therefore, the EPA maintains that the State's regulations are inconsistent with the Federal rule because an emissions increase is allowed for individual changes under Regulation 26.10(b)(1) while the State's regulations at Regulation 26.10(b)(7) and the Federal rule at 40 CFR 70.7(e)(2)(i)(A)(5) disallow emissions increases.

4. Incorporation by Reference of PSD Requirements

Comment was made that the State should not have to formally incorporate by reference the PSD requirements into Regulation 26 as stated in the proposal for this action.

The EPA concurs with this comment. The proposal recommended incorporation of the PSD requirements in order to clarify the regulation for major sources. The State can effectively meet this requirement by amending the regulations at 26.3(b) with:

(4) Any source subject to § 19.9 of the *Compilation of Regulations of the Arkansas State Implementation Plan for Air Pollution Control*.

5. PSD Applicability for Constructed/Modified Sources

Comment was made that the EPA should require Arkansas to revise its operating permit regulation so that the operating permit need only be revised before a change is placed in operation, rather than before construction begins.

The EPA does not agree with this comment. The State of Arkansas has clearly demonstrated that major sources will be regulated by Regulation 26. These sources are required to obtain a modification to the operating permit that incorporates the applicable requirements reflected in the SIP (Regulation 19) before construction begins. This procedure allows the facility to obtain a pre-construction permit as well as a modification to the operating permit. Also, this process allows for adequate public comment without duplicating the public notice process.

If the State chose to revise the regulation as the comment suggests, the facility would still have to obtain a pre-construction permit under Regulation 19 before construction. This includes the requirement of full public review for significant modifications. Then, the

facility would have to obtain a significant modification for the operating permit under Regulation 26 before operating the modified unit.

6. Deviation Reporting

All three comments objected to the EPA requirement that the State define "prompt" in the regulations with respect to deviations.

The EPA concurs with these comments. The notice for proposed approval reflected the most prudent position the EPA could take that would offer clear guidance to the regulated community while protecting the environment. Since publication of the notice, the EPA has reconsidered this position and agrees with the comments that the term "prompt" may be defined in the permit.

The EPA maintains that "prompt" should be defined as two to ten days after a deviation. This timeframe is sufficient in most cases to protect public health and safety as well as provide a forewarning of potential problems. The regulating authority should give consideration to shorter timeframes where potential health and safety concerns exist. Where "prompt" is defined in the individual permit but not in the program regulations, the EPA may veto permits that do not require sufficiently prompt reporting of deviations.

7. Variance Provisions

Comments objected to the EPA's position that variance provisions under State statute do not apply to title V permits unless title V processes are followed.

The EPA does not agree with these comments. As discussed in the proposed notice, the EPA recognizes the State's statutory authority to grant variances. However, 40 CFR part 70 does not allow States to grant variances from title V requirements. The EPA recognizes that title V permits may include compliance schedules for sources which are out of compliance with applicable requirements. However, such measures to bring a source into compliance are not the same as variances, which normally provide a complete exemption from a requirement for the duration of the variance. The EPA also recognizes that Arkansas may exercise enforcement discretion when addressing permit violations, but such discretion is not unlimited.

8. Incorporation by Reference of Application and Permit Content

Comment was made that the State should not have to formally incorporate by reference the application and permit

content requirements from 40 CFR 70.5(c) and 70.6(a-c) into Regulation 26 as stated in the proposal.

The EPA does not agree with this comment. Though it may appear clear that the application content and permit content are fully incorporated into the State regulations, formal incorporation by reference will provide a date of promulgation to the incorporated provisions. Changes to the State's program are certain as the Clean Air Act Amendments are implemented, and in this way the State regulations are made clear for enforcement and implementation purposes.

C. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by the State of Arkansas on November 9, 1994. The State must make the following changes to receive full approval:

1. Incorporation by Reference

The State must amend Regulation 26.4 and 26.7 to incorporate the date of promulgation of the rule at 40 CFR part 70 as referenced in the regulation. By incorporating the promulgation date of July 21, 1992, the State regulations will be made clear.

2. Minor Modification Procedures

The language in the State's Regulation 26.10(b)(1) regarding emission levels must be deleted to make the regulations consistent with the Federal rule at 40 CFR 70.7(e)(2)(i)(A) and the State's Regulations 26.10(b)(7) and 19.2.

3. Submission of Regulation 19

The State of Arkansas must ensure consistency between the operating permits program (Regulation 26) and the SIP (Regulation 19). The State is working on a revision to Regulation 19.4 to make the SIP consistent with Regulation 26. A SIP revision must be submitted that is consistent with the rule at 40 CFR part 70 during the interim approval period.

Arkansas' part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the State of Arkansas, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-55818 (November 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as

Indians." See section 302(r) of the Clean Air Act; see also 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

This interim approval, which may not be renewed, extends until October 8, 1997. During this interim approval period, the State of Arkansas is protected from sanctions, and the EPA is not obligated to promulgate, administer and enforce a Federal Operating Permits program in the State of Arkansas. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the three year time period for processing the initial permit applications.

If Arkansas fails to submit a complete corrective program for full approval by April 8, 1997, the EPA will start an 18 month clock for mandatory sanctions. If Arkansas then fails to submit a corrective program that the EPA finds complete before the expiration of that 18 month period, the EPA will apply sanctions as required by section 502(d)(2) of the Act, which will remain in effect until the EPA determines that the State of Arkansas has corrected the deficiency by submitting a complete corrective program.

If the EPA disapproves Arkansas' complete corrective program, the EPA will apply sanctions as required by section 502(d)(2) on the date 18 months after the effective date of the disapproval, unless prior to that date Arkansas has submitted a revised program and the EPA has determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of Arkansas has not timely submitted a complete corrective program or the EPA has disapproved its submitted corrective program. Moreover, if the EPA has not granted full approval to the Arkansas program by the expiration of this interim approval and that expiration occurs after November 15, 1995, the EPA must promulgate, administer and enforce a Federal permits program for the State of Arkansas upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities,

adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including the eight public comments received and reviewed by the EPA on the proposal, are contained in docket number OPP-2-9-1 maintained at the EPA Regional Office. The docket is an organized and complete file of \$100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 25, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for the State of Arkansas in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Arkansas

(a) The ADPCE submitted its Operating Permits program on November 9, 1993, for approval. Interim approval is effective on October 10, 1995. Interim approval will expire October 8, 1997.

(b) (Reserved)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003-5070-02; I.D. 090195A]

Pacific Halibut Fisheries; Inseason Actions Off California, Oregon, and Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason actions.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes these inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. These actions are intended to enhance the conservation of the Pacific halibut stock.

EFFECTIVE DATES: Area 2A non-treaty commercial fishery reopening 8 a.m. through 6 p.m., local time, August 29, 1995; north Washington coast sport fishery reopening 8 a.m., local time,

September 3, 1995, through 6 p.m., local time, September 4, 1995; Columbia River Area closure 6 p.m., local time, September 30, 1995, through December 31, 1995; California coastal waters closure 6 p.m., September 30, 1995 through December 31, 1995.

FOR FURTHER INFORMATION CONTACT:

Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued these inseason actions pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, these inseason actions are published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason actions of the restrictions and requirements established therein.

Inseason Actions

1995 Halibut Landing Report Number 13

Area 2A Non-Treaty Commercial Fishery to Reopen

The August 15 fishing period in Area 2A resulted in a catch of 25,000 lb (11.3 metric tons (mt)). The revised total commercial catch from Area 2A to date is 73,000 lb (33.11 mt), leaving approximately 32,000 lb (14.51 mt) to be taken.

Area 2A will reopen on August 29 for 10 hours from 8 a.m. to 6 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53'18" N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.